



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2022-0035]

RIN 1625-AA09

Drawbridge Operation Regulation; Chicago River, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the Dearborn Street Bridge, mile 1.13, over the Main Branch of the Chicago River at Chicago, Illinois. During this maintenance period, the bridge need only operate one leaf while the other leaf remains secured to masthead navigation. Vessels able to pass under the bridge without an opening may do so at any time.

DATES: This temporary final rule is effective from 11:59 p.m. on February 13, 2022 through 12 p.m. on November 1, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2022-0035 in the “SEARCH” box and click “SEARCH.” In the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail: Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IGLD 85	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD 85
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable, as the Coast Guard did not receive details for the maintenance event until January 20, 2022. There was insufficient time to undergo a full rulemaking process, including providing a reasonable comment period and considering those comments because the bridge is scheduled to start repairs on February 13, 2022. Delaying repairs would negatively impact public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the Federal Register. Delaying the effective date would be contrary to the public interest, as the public interest in initiating repairs to the bridge on time outweighs the potential burden the closure will place on waterway users. Most vessels that require an opening only need one leaf of the bridge to open to safely pass. Further, as necessary, vessels can detour through the Calumet River and arrive at the same destination.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Dearborn Street Bridge, mile 1.13, spans the Main Branch of the Chicago River at Chicago, Illinois. The Dearborn Street Bridge, mile 1.13, over the Main Branch of the Chicago River provides a horizontal clearance of 200 feet and a vertical clearance of 22 feet above LWD. The bridges of Chicago are historic and all of them are over 100 years old and require frequent maintenance and repairs that occur with little warning. Typically, these repairs must be attended to immediately to protect the health and welfare of pedestrians crossing the bridges each day. The current bridge regulations for the Chicago River are contained in 33 CFR 117.391 and allows the bridges to open on signal if a 12-hour advance notice is provided by commercial vessels and a 20-hour advance notice by recreational vessel during posted times. The Chicago River bridges operate infrequently as almost all vessels can pass through the bridges without an opening. The exceptions are recreational sailing vessels that pass the bridge in City of Chicago sponsored flotillas twice a year that can pass safely with one leaf open. Commercial vessels transits that require both bridge leaves to open are rare, occurring less than once a month on average. All vessels have the opportunity to detour through the Calumet River.

IV. Discussion of the Rule

This rule establishes a temporary change to the operation of the Dearborn Street Bridge, mile 1.13, over the Main Branch of the Chicago River at Chicago, Illinois. During the period from [insert dates from above], the Dearborn Street Bridge, mile 1.13, need only operate one leaf for the passage of vessels, while the other leaf is secured to masted navigation for maintenance. The effect of not performing the maintenance would be to deny the bridge to an estimated 10,000 persons commuting to work daily if repairs and required maintenance are not started in a timely manner.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge through one leaf and that most vessels can pass under the bridge without an opening.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted

for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security

Delegation No. 0170.1.

2. In § 117.391, effective from 11:59 p.m. on February 13, 2022 through 12 p.m. on November 1, 2022, temporarily add paragraph (f) to read as follows:

* * * * *

(f) The Dearborn Street Bridge, mile 1.13, need only operate one leaf for the passage of vessels, while the other leaf is secured to masthead navigation for maintenance.

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M. J. Johnston
Rear Admiral, U.S. Coast Guard,
Commander, Ninth Coast Guard District.
[FR Doc. 2022-02910 Filed: 2/10/2022 8:45 am; Publication Date: 2/11/2022]